

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations

(Anniston and Ashland, Alabama.  
College Park, Covington,  
Milledgeville, and Social Circle, Georgia)

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MM Docket No. 98-112  
RM-9027  
RM-9268  
RM-9384

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

**MOTION FOR LEAVE TO FILE RESPONSE**

1. WNNX LICO, Inc. ("WNNX"), licensee of Station WWVQ(FM), College Park, GA, by its counsel, hereby moves for leave to respond to the January 2, 2003 pleading of Preston W. Small in this proceeding entitled "Notice of No Response Received to Third and Fourth Motions for Leave to File Supplement and Request for Entry of Adverse Findings Against WNNX LICO, Inc." (the "January 2 Pleading")

2. On December 4, 2002, Small filed a Third Motion for Leave to File Supplement and on December 13, 2002 a Fourth Motion for Leave to File Supplement. In the January 2 Pleading, Small seeks to introduce new arguments in support of the grant of his third and fourth motions, and requests that the proceeding be reopened, the grant of WNNX's petition for rule making vacated and WNNX disqualified. Specifically, Mr. Small argues that (a) allegations made in his Third and Fourth Motions – allegations that WNNX has misrepresented facts and has threatened civil litigation against Mr. Small – must be accepted as true because they were unopposed in the record of this proceeding, and that (b) acceptance of these allegations as true entails the disqualification of WNNX.

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3. These new arguments are not in response to any Commission request or filing opportunity, and are unaccompanied by any motion for their acceptance or any reason why they should be considered at this point in the proceeding. As a procedural matter, Mr. Small does not have the ability to raise these arguments now. The Commission granted WNNX's petition for rule making by Report and Order on April 24, 2000. That grant is not yet final only because Mr. Small has continued to file petitions for reconsideration of that action, all but the most recent of which the Commission has dismissed or denied. The most recent petition for reconsideration – Mr. Small's fourth – was filed on August 19, 2002 and again on September 3, 2002. The pleading cycle ended on November 8, 2002.

4. Since Mr. Small's January 2 Pleading as well as all of his Third and Fourth Motions are unauthorized and untimely, they should not be considered as part of the record of this proceeding. The Commission's rules do not permit the filing of unauthorized pleadings as Mr. Small apparently believes he is entitled to do. See 47 C.F.R. §§ 1.415(d) ("No additional comments may be filed unless specifically requested or authorized by the Commission"); 1.429(c) ("No supplement to a petition for reconsideration filed after expiration of the 30 day period will be considered, except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement").

5. However, should the Commission consider Mr. Small's arguments, which are directed at the merits of this proceeding, it should also afford WNNX the opportunity to respond to those arguments. Accordingly, WNNX moves for acceptance of the accompanying response to the January 2 Pleading.

WHEREFORE. for the foregoing reasons, if the Commission does not strike Mr. Small's January 2, 2003, Pleading, **it** should accept WNNX's response to that pleading.

Respectfully submitted,

WNNX LICO, INC.

A handwritten signature in dark ink, appearing to read "Mark N. Lipp", is written over a horizontal line.

Mark N. Lipp

J. Thomas Nolan

Shook, Hardy & Bacon LLP

600 14th Street, N.W., Suite 800

Washington, D.C. 20005

(202) 783-8400

Its Counsel

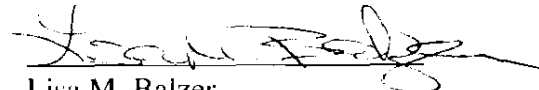
January 14, 2003

**CERTIFICATE OF SERVICE**

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy & Bacon L.L.P., do hereby certify that on this 14<sup>th</sup> day of January, 2003, I have mailed the foregoing "Motion for Leave to File Response" to the following:

\*Robert Haync, Esq.  
Audio Division  
Media Bureau  
Federal Coinmunications Commission  
445 12th Street, SW  
Room 3-A262  
Washington, DC 20554

Timothy E. Welch, Esq.  
Hill & Welch  
1330 New Hampshire Avenue, NW  
Suite 113  
Washington, DC 20036  
(Counsel to Preston W. Small)

  
Lisa M. Balzer